

SERVICE DATE - JULY 3, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 126X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT
EXEMPTION--IN JEFFERSON COUNTY, WI

Decided: June 30, 2000

On November 5, 1998, a decision and notice of interim trail use or abandonment (NITU) was served, authorizing a 180-day period for the City of Fort Atkinson (City) to negotiate an interim trail use/rail banking agreement with Union Pacific Railroad Company (UP) for the 2.0-mile line of railroad on the Clyman Branch from the end of the line at milepost 110.0 to milepost 112.0 near Fort Atkinson, in Jefferson County, WI. The 180-day negotiating period under the NITU was scheduled to expire on May 7, 1999, but was extended through May 1, 2000, by decisions served April 30, 1999, and October 21, 1999.

On June 29, 2000, Wisconsin Department of Transportation (WisDot), on behalf of the City, filed a request to extend the negotiating period for an additional 180 days.¹ WisDot states that negotiations between the parties (the City and UP) are currently continuing in good faith. Also on June 29, 2000, UP advised that it is agreeable to an extension of the NITU negotiating period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.² Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D. C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly the NITU negotiating period will be extended, as requested by the City, for an additional 180 days from May 1, 2000, or until October 28, 2000.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ WisDot was evidently under the impression that the latest extension expired on May 7, 2000. The latest extension actually expired on May 1, 2000.

² See Rail Abandonment--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Missouri Pacific Railroad Company--Abandonment in OK, Docket No. AB-3 (Sub-No. 63) (ICC served Jan. 2, 1990); and St. Louis Southwestern Railway Company--Abandonment in Smith and Cherokee Counties, TX, 9 I.C.C. 2d 406 (1992).

It is ordered:

1. The request to extend the interim trial use negotiating period is granted.
2. The NITU negotiating period is extended until October 28, 2000.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary